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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 NML CAPITAL, LTD.,

18 Plaintiff,

19 vs.

20 SPACE EXPLORATION
TECHNOLOGIES CORP., aka
21 SPACEX, a Delaware corporation; THE
REPUBLIC OF ARGENTINA, a foreign
22 state, including its *COMISION*
NACIONAL DE ACTIVIDADES
23 *ESPACIALES*, aka CONAE, a political
subdivision of the Argentine State; and
24 DOES 1-10,

25 Defendants.

CASE NO. 14 CV 02262-SVW-Ex

Hon. Stephen V. Wilson

**PLAINTIFF NML CAPITAL,
LTD.'S REPLY IN SUPPORT OF
ITS MOTION FOR LEAVE TO
SERVE DISCOVERY PRIOR TO
RULE 26(f) CONFERENCE**

Hearing date: March 9, 2015

Hearing time: 1:30 p.m.

Hearing location: Courtroom No. 6

Before: Hon. Stephen V. Wilson

1 **I. INTRODUCTION**

2 The Republic of Argentina (“Argentina”) and Space Exploration
 3 Technologies Corp. (“SpaceX”) (collectively, “Defendants”) assert three meritless
 4 arguments in their oppositions to Plaintiff NML Capital, Ltd.’s (“NML” or
 5 “Plaintiff”) Motion For Leave to Serve Discovery Prior to a Rule 26(f) Conference
 6 (“Motion”). Defendants incorrectly argue that: (1) because Defendants are
 7 challenging the Court’s jurisdiction in their motion to dismiss, NML cannot seek
 8 discovery related to non-jurisdictional issues, or alternatively, NML cannot seek
 9 discovery because the Court has not yet ruled on whether the launch services rights
 10 are subject to execution under the Foreign Sovereign Immunities Act (“FSIA”); (2)
 11 NML’s discovery requests are overbroad and burdensome; and (3) NML should not
 12 be allowed discovery in the interests of efficiency and judicial economy.

13 All of these arguments are meritless, as explained below. *First*, the Court
 14 indisputably has jurisdiction over the parties served with this limited discovery—
 15 Argentina and SpaceX. *See* Declaration of Harold A. Barza (“Barza Decl.”), Exs. 5-
 16 6 (discovery directed to Argentina), Exs. 7-9 (discovery directed to SpaceX).
 17 Argentina expressly waived its immunity in the agreement governing the underlying
 18 bonds, and a federal court has entered final judgments against it in excess of \$1.7
 19 billion. Argentina’s contention that the Court has no jurisdiction to allow
 20 postjudgment discovery against the judgment debtor itself is wrong. Furthermore,
 21 the Court certainly has jurisdiction to allow discovery against SpaceX—a non-
 22 governmental entity. Argentina’s cited authority simply does not address the
 23 Court’s discretion to allow postjudgment discovery under the FSIA. *Second*,
 24 Defendants’ overbreadth objections ignore the fact that Defendants expressly
 25 refused to engage in meet and confer discussions regarding the scope of that
 26 discovery before this motion was filed, which is narrowly tailored in any event.
 27 *Finally*, the interest of efficiency and judicial economy weigh heavily in favor of
 28 allowing discovery at this stage of the proceedings given the time-sensitive and

1 depreciating nature of the launch services rights at issue, which could become
2 worthless if discovery is delayed much longer.

3 **II. ARGUMENT**

4 **A. This Court Has Discretion To Allow NML To Conduct Limited** 5 **Discovery And Defendants Cite No Cases To The Contrary**

6 Defendants' argument that there is a jurisdictional bar to limited discovery is
7 meritless. *See* Argentina Opp. at 2; SpaceX Opp. at 2-4. Argentina expressly
8 waived any claim to immunity in the 1994 Fiscal Agency Agreement that governs
9 the Argentine bonds on which NML's judgments are based. Dkt. 1, ¶ 16. Since the
10 Court indisputably has jurisdiction over Argentina it certainly can exercise
11 postjudgment jurisdiction over Argentina just as it could over any other judgment
12 debtor. *See EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 209 (2d Cir. 2012)
13 *aff'd sub nom. Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2250 (2014);
14 *see also First City, Texas Houston, N.A. v. Rafidain Bank*, 281 F.3d 48, 53 (2d Cir.
15 2002) (a foreign state's waiver of immunity "is broad enough to sustain the court's
16 jurisdiction through proceedings to aid collection of a money judgment rendered in
17 the case, *including discovery pertaining to the judgment debtor's assets.*")
18 (emphasis added). In fact, "rules governing discovery in postjudgment execution
19 proceedings are quite permissive." *Republic of Argentina v. NML Capital, Ltd.*, 134
20 S. Ct. 2250, 2254 (2014). And it is undisputed that this Court has jurisdiction to
21 allow discovery against SpaceX—a non-governmental entity with substantial
22 business operations in this jurisdiction.

23 Citing inapposite authority, Argentina argues that district courts routinely
24 reject attempts by judgment creditors to conduct limited, non-jurisdictional
25 discovery while a motion to dismiss grounded on sovereign immunity is pending.
26 Argentina Opp. at 2. However, these cases simply do not address the availability of
27 *limited discovery in postjudgment* proceedings against a sovereign judgment debtor
28 that has been found subject to jurisdiction and liable to Plaintiff under the FSIA.

1 Instead, they address the availability of *expansive discovery* in *prejudgment*
 2 proceedings against governmental officials whose qualified immunity has not been
 3 abrogated. *See Harlow v Fitzgerald*, 457 U.S. 800, 816-18 (1982) (discovery sought
 4 delved into the expanse of the subjective intent of U.S. presidential aides, with “no
 5 clear end to the relevant evidence.”); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 685
 6 (2009) (noting that “[t]he basic thrust of the qualified-immunity doctrine is to free
 7 officials from the concerns of litigation, including ‘avoidance of disruptive
 8 discovery.’”); *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (finding
 9 that there was “good reason” for a government agent’s investigation into an alleged
 10 misappropriation of funds at a government sponsored youth program, and noting
 11 that “discovery could not have affected the [qualified] immunity decision.”); *Hart v.*
 12 *Gaione*, 2003 WL 21308891, at *1 (C.D. Cal. June 3, 2003) (denying defendant’s *ex*
 13 *parte* application to stay discovery because defendant had not asserted a qualified
 14 immunity defense). These cases are facially distinguishable because the stage of
 15 proceedings, scope of discovery, and status of the parties are all different.

16 Unlike the cases cited by Argentina, NML does not seek extensive discovery
 17 in prejudgment proceedings from governmental officials whose qualified immunity
 18 has not been adjudicated. It only seeks limited discovery from a judgment debtor
 19 and a holder of the debtor’s assets in order to execute on assets to partially satisfy its
 20 final judgments. Argentina’s strained attempt to analogize itself to a domestic
 21 governmental officer entitled to qualified immunity, and not a foreign judgment
 22 debtor that has expressly waived its immunity and been adjudicated liable is
 23 misplaced.

24 SpaceX’s cited authority fares no better in establishing that NML is not
 25 entitled to limited discovery in this case. *See* SpaceX Opp. at 2-4. In *Boschetto v.*
 26 *Hansing*, the court found that a car seller on Ebay lacked sufficient minimum
 27 contacts for personal jurisdiction in California because there was a “total absence of
 28 any evidence or allegations that the conduct [] involved more than just this one

1 sale.” 539 F. 3d 1011, 1020 (9th Cir. 2008). However, Argentina has waived its
 2 jurisdiction objection, and SpaceX is clearly subject to personal jurisdiction in this
 3 district. While *Boschetto* held that the district court did not abuse its discretion in
 4 denying discovery, it did not address the discretion of a court to authorize limited
 5 discovery in postjudgment proceedings concerning a judgment debtor’s assets.

6 In *Wagh v. Metris Direct, Inc.*, the court dismissed a credit card holder’s
 7 RICO claim against providers of credit protection services and upheld the district
 8 court’s discretionary decision not to allow discovery on the grounds that Plaintiff’s
 9 allegations were insufficient to state a claim for relief. 363 F.3d 821, 829 (9th Cir.
 10 2003). Like *Boschetto*, this inapposite case involves clearly distinguishable facts
 11 and does not address the availability of discovery in postjudgment proceedings.

12 SpaceX then cites four FSIA cases in which courts denied discovery or only
 13 allowed jurisdictional discovery. See SpaceX Opp. at 2-3. However, none of these
 14 cases involved postjudgment proceedings, and they primarily addressed
 15 jurisdictional discovery not at issue in the present case. See *Greenpeace, Inc.*
 16 *(U.S.A.) v. France*, 946 F. Supp. 773, 789 (C.D. Cal. 1996) (holding that Plaintiffs’
 17 requested discovery “could not possibly enable Plaintiffs to establish jurisdiction,”
 18 but more importantly, explaining that “it is an *abuse of discretion* to dismiss for lack
 19 of subject matter jurisdiction without giving plaintiff reasonable opportunity, if
 20 requested, to conduct discovery [to establish jurisdiction].”) (emphasis added);
 21 *Carolan v. Cardiff Univ.*, 113 Fed. Appx. 193, 194 (9th Cir. 2004) (finding that the
 22 district court did not abuse its discretion in not allowing discovery, where a Welsh
 23 university did not have continuous and systematic general business contacts with
 24 Washington State, and where plaintiff student’s acceptance of defendants’ offer of
 25 admission while in Washington was not enough to establish specific jurisdiction);
 26 *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1032 (9th Cir. 2010) (allowing the
 27 plaintiff to obtain jurisdictional discovery from an instrumentality of Spain, and
 28 finding that, under the FSIA, the instrumentality was engaged in commercial

1 activity because its actions were “the *type* of actions by which a private party
 2 engages in trade and traffic or commerce,” even though undertaken on behalf of a
 3 non-profit museum to further its cultural mission); *NXP Semiconductors USA, Inc.*
 4 *v. Brevets*, 2014 U.S. Dist. LEXIS 130493, at *2, *42-43 (N.D. Cal. Sept. 15, 2014)
 5 (in an action seeking declaratory judgment related to the non-infringement and
 6 invalidity of defendant’s patents, the Court found that plaintiff’s proposed
 7 jurisdictional discovery regarding the relationship between co-defendants, a French
 8 parent company and a U.S. subsidiary, would not be helpful because neither
 9 defendant had contacts with California that give rise to plaintiff’s claims). Indeed,
 10 *NXP Semiconductors*, cited by SpaceX (SpaceX Opp. at 3), fully supports NML’s
 11 position that CONAE is a political subdivision of Argentina under the controlling
 12 “core functions” test.

13 None of these cases cited by Defendants hold that a district court does not
 14 have discretion to allow NML, in a postjudgment proceeding, the opportunity to
 15 serve limited discovery on a judgment debtor like Argentina or a non-governmental
 16 entity like SpaceX in order to expedite proceedings where the value of an asset that
 17 may be subject to execution is depreciating. The Court clearly has discretion to
 18 authorize discovery in these circumstances.

19 **B. Defendants Rejected NML’s Offer To Discuss Narrowing The**
 20 **Proposed Discovery Requests**

21 Defendants next argue that NML’s discovery requests are overbroad and
 22 burdensome. *See* Argentina Opp. at 4; SpaceX Opp. at 6-7. This argument is
 23 disingenuous because when NML’s counsel offered to discuss the possibility of
 24 narrowing the requests, Defendants refused. *See* Barza Decl., ¶ 5. In fact,
 25 Defendants blocked all of NML’s proposed discovery by refusing to engage in a
 26 Rule 26(f) conference in July 2014, and now inconsistently argue that the discovery
 27 is burdensome and that NML is “forc[ing] SpaceX to respond to dozens of requests
 28 that were formulated without the Rule 26(f) conference.” *See* Barza Decl., ¶ 2;

1 SpaceX Opp. at 7. This catch-22 argument should be rejected. And in any event,
 2 NML's proposed discovery is narrowly tailored—focused squarely on enabling
 3 NML to establish those facts necessary to establish its entitlement to execute upon
 4 its final judgments, nothing more. This discovery is necessary to obtain a copy of
 5 the underlying launch services contract, which Defendants have refused to
 6 voluntarily provide, and other evidence necessary to move for a sale order, including
 7 evidence establishing that CONAE is a political subdivision of Argentina and that
 8 the launch services rights are subject to execution. Argentina and SpaceX have
 9 made no showing that the limited discovery sought by NML is not relevant and in
 10 furtherance of the postjudgment relief sought in this action.

11 **C. In The Interests of Efficiency and Judicial Economy The Court**
 12 **Should Grant NML's Motion**

13 Contrary to the arguments of Argentina and SpaceX, the interests of
 14 efficiency and judicial economy clearly weigh in favor of allowing limited
 15 discovery given the time-sensitivity resulting from the depreciating nature of the
 16 assets at issue.¹ See Argentina Opp. at 2-3; SpaceX Opp. at 7. None of the cases
 17 cited by Argentina in support of its judicial economy argument involved judgment
 18 creditors seeking to levy upon a depreciating asset like this one. See, e.g., *Rutman*
 19 *Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 731-32 (9th Cir. 1987) (plaintiff
 20 brought antitrust claims seeking monetary damages and injunctive relief); *Hall v.*
 21 *Apollo Grp., Inc.*, 2014 WL 4354420, at *1 (N.D. Cal. Sept. 2, 2014) (pro se
 22 plaintiff sought monetary damages by asserting fraud and other claims against for-
 23 profit university). It would be inefficient and a waste of judicial resources if NML
 24

25 ¹ SpaceX notes twice in its brief that Keith Volkert states in his declaration that it is
 26 “relatively simple” to market launch services rights, but neglects to mention that Volkert’s
 27 declaration explains that it would still take several months for a potential purchaser to prepare for
 28 a satellite launch after buying the rights. See SpaceX Opp. at 4-5, fn. 2, 3; Volkert Decl., ¶ 7.

1 succeeded on the merits and gained control of the launch service rights, only to be
2 unable to sell them due to the passage of time. The Court should grant the limited
3 discovery sought by the present motion.

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5 DATED: February 23, 2015

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7
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